Antitrust was crafted into American law to prevent businesses from becoming so large to the point that they exploit consumers. Ostensibly, Major League Baseball has been exempt from federal antitrust law since 1922, despite its actions. In The Baseball Trust: A History of Baseball’s Antitrust Exemption, Stuart Banner discusses the history, rational, and potential future of the exemption that has kept legal scholars pondering for decades. Banner continues to struggle to explain the anomaly that is the baseball antitrust exemption, but makes severable plausible arguments and rationales for the exemption. Understanding the reasons why the baseball antitrust exemption has continued for almost a century is nearly impossible, but Banner does an excellent job in making the case for the legislative and judicial branches’ reasoning for the continuance. The purpose of the book is to give readers a better grasp on “one of the oddest features of our legal system.”

Author Stuart Banner is a legal professor at UCLA School of Law, teaching Property and other upper level courses. Banner has written several other books prior to The Baseball Trust, including: American Property: A History of How, Why, and What We Own, Who Owns the Sky? The Struggle to Control Airspace from the Wright Brothers On, and several more published by Harvard University Press. Banner graduated from Stanford Law School and has clerked for multiple judges, including Sandra Day O’Connor of the U.S. Supreme Court.
Congress passed the Sherman Act in 1890 under the Commerce Clause. To violate the Sherman Act, a company or business must be engaging in interstate commerce. No sport was challenged under the Sherman Act until 1922, when Major League Baseball was challenged in *Federal Baseball Club v. National League*. Ultimately, the Supreme Court ruled that Baseball could not violate the Sherman Act because the baseball game itself was not a form of interstate commerce. This was not a departure from the common law at the time, and as Banner states, “no one would have thought that baseball had any special exemption.” Baseball would subsequently be challenged under the Sherman Act several times, even at the Supreme Court level, and while the reasoning may have changed, the rule has not. The Supreme Court has repeatedly punted the question to Congress who has yet to write-off the baseball antitrust exemption.

*The Baseball Trust* begins by discussing the first challenge of professional baseball under the Sherman Act. *Federal Baseball Club* challenged the Reserve Clause, which essentially bound a player to a team for life. The plaintiffs argued that the American League and the National League were eliminating competition by not allowing players to sign with a team in the plaintiff’s league, the Federal League. As Banner notes, “there were good arguments on both sides,” regarding whether or not baseball should be considered interstate commerce at the time. Banner goes into detail regarding the current state of the Commerce Clause and is able to argue up and down whether baseball was interstate commerce in 1922, the year of the *Federal Baseball Club* case. Ultimately, the Supreme Court held that baseball was not a form of interstate commerce, despite the fact that teams and equipment traveled interstate. The theory was that because an individual
game was played at one location and not traveling interstate, baseball was purely intrastate and could not be subject to federal antitrust laws. Justice Holmes stated, “the transport is a mere incident, not the essential thing.”

Banner next discusses the second flood of cases that challenged the baseball antitrust exemption during the late 1940’s and early 1950’s. The reasoning used by the Supreme Court in *Federal Baseball Club* had diminished as the Commerce Clause had expanded. In 1949, the Second Circuit Court of Appeals ruled that the baseball was interstate commerce and ordered the district court to retry a case. However, before the district court reheard the case, the case was settled. As Banner noted, while this did not strike down the exemption, it “pierced the armor protecting baseball from antitrust suits.”

Following the flood of cases, Congress decided to investigate the monopoly power of professional baseball. Congress ultimately concluded that baseball was a unique industry and refused to enact legislation regarding baseball and its connection to antitrust law. The Supreme Court used this inactivity in its holding in *Toolson v. New York Yankees* in 1953. The Court held that due to Congress’s inactivity, their intention was to keep baseball exempt from antitrust law. While Banner acknowledges this holding, he demonstrated another theory that the Court perhaps considered when upholding the exemption in *Toolson*. Banner commented that a likely motive of the Court was to prevent “retroactive liability” of professional baseball. If the Court ruled in *Toolson* that professional baseball was subject to antitrust law, then they would be retroactively liable to all prior actions, including the Reserve Clause. This would effectively disband professional baseball, as hundreds of players would be able to file actions against
professional baseball. Thus, the Supreme Court once again punted the question of baseball’s antitrust exemption to Congress.

Banner then examines the uniqueness of baseball’s antitrust exemption as compared to other sports. The Supreme Court debated this question in 1955 in *United States v. International Boxing Club of New York* and held that previous rulings on baseball being exempt from antitrust law was not inclusive of other sports or industries, but rather just baseball. Banner explicitly stressed that in not including other sports in the baseball exemption, courts argued that if *Federal Baseball Club* did not exist, then antitrust laws would govern all sports, including baseball. Banner believes that baseball’s exemption is due to “justices’ aversion to overruling the Court’s prior cases…”

Banner then goes into detail on the most famous baseball antitrust case, *Flood v. Kuhn*. In 1970, Curt Flood filed an antitrust suit against Major League Baseball, once again challenging the Reserve Clause. The Supreme Court held that baseball is in fact interstate commerce, however it is the legislature’s duty to modify baseball’s exemption, denying Flood’s case and upholding baseball’s antitrust exemption. While Flood lost the case, just a few years later, an arbitrator banned the Reserve Clause and free agency was implemented.

To complete *The Baseball Trust*, Banner discusses recent cases that have contracted and then expanded the baseball antitrust exemption. Courts have changed the interpretation of *Federal Baseball Clubs* and *Flood*, but the Supreme Court has still never fully overturned the baseball antitrust exemption. Banner continues to emphasize that the rise of player unions has created Collective Bargaining Agreements, so the need for antitrust suits have diminished tremendously.
The Baseball Trust offers an excellent history of the baseball antitrust exemption. Banner conducts a highly in depth analysis of cases, congressional hearings, and various judges’ opinions throughout the book. Banner not only provides factual information, but also provides his own legal analysis of the reasoning behind the baseball antitrust exemption. While the baseball antitrust exemption may never fully be understood, The Baseball Trust provides an excellent factual and opinioned viewpoint.